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CONTINENTAL D.I.A. DIAMOND PRODUCTS, INC.
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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 CONTINENTAL D.I.A. DIAMOND
12 PRODUCTS, INC., a California corporation,

13 Plaintiff,

14 vs.

15 DONG YOUNG DIAMOND INDUSTRIAL
16 CO., LTD., a South Korean company,
DONGSOO LEE, an individual, and DOES 1-
17 10, inclusive,

18 Defendants.
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Case No. CV 08-2136 SI

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' REQUEST TO
ENLARGE TIME AND REPLY TO
DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION TO STRIKE**

Date: August 29, 2008
Time: 9:00 a.m.
Place: Courtroom 10, 19th Floor
Judge: Honorable Susan Illston

Complaint Filed: April 24, 2008
Trial Date: None Set

1 Plaintiff Continental D.I.A. Diamond Products, Inc. submits this brief in response to
 2 Defendants' late-filed opposition to Plaintiff's motion to strike and ex post fact request for an
 3 extension to file that opposition. Plaintiff respectfully requests that the Court disregard the
 4 Defendants' opposition and motion for an extension of time.

5 While Plaintiff is sympathetic to the predicament that Defendants were in as a result of the
 6 mistake of counsel, there is a far-greater concern regarding Defendants' unwillingness to set-forth
 7 sufficient facts to support their conclusory allegations of fraud and the like in their Counterclaim
 8 and Answer as required by Federal Rules of Civil Procedure 8 and 9. Certainly, if Defendants had
 9 facts supporting such claims and defenses, it would have been far more credible and productive for
 10 Defendants to file an amended answer rather than filing an untimely opposition that offers little
 11 more than horn book law on why motions to strike are disfavored by courts. However, Defendants'
 12 continuing inability to articulate *any* facts to support their defenses, such as fraud, estoppel, and
 13 unclean hands, demonstrates that with certainty that those defenses are meritless and Plaintiff's
 14 motion to strike is well-taken. Indeed, Defendants ask the Court for leave to amend if Plaintiff's
 15 motion to strike is granted, yet offer no factual basis to justify that request. Accordingly, regardless
 16 of whether the Court considers Defendants' late-filed opposition, Plaintiff respectfully requests that
 17 the Court grant Plaintiff's motion to strike in its entirety.

18 Dated: August 19, 2008

Respectfully submitted,

19 MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO P.C.

20 /s/ Jeffrey M. Ratinoff

21 By: JEFFREY M. RATINOFF

22 Attorneys for Plaintiff/Counterclaim Defendant,
 23 Continental D.I.A. Diamond Products, Inc.

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